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Nos. 14-556, 14-562, 14-571, 14-574

IN THE SUPREME COURT OF THE UNITED STATES

JAMES OBERGEFELL, et al.,
Petitioners

v.

RICHARD HODGES, et al.,

Respondents.

[Additional Captions on Back Cover]

On Writs of Certiorari to the U.S. Court Of Appeals for the Sixth Circuit

BRIEF OF AMICI CURIAE DR. JUDITH REISMAN AND LIBERTY CENTER FOR CHILD PROTECTION IN SUPPORT OF RESPONDENTS

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VALERIA TANCO, et al.,
Petitioners,

v.

WILLIAM EDWARD "BILL" HASLAM,

et al., Respondents.

APRIL DEBOER, et al.,
Petitioners,

v.

RICHARD SNYDER, et al.,

Respondents.

GREGORY BOURKE, et al.,
Petitioners,

v.

STEVE BESHEAR, et al., Respondents.

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INTEREST OF AMICI[1]

Amici are the Liberty Center for Child Protection and Judith Reisman, Ph.D., who is Director of the Center. Dr. Reisman served as Principal Investigator for the United States Department of Justice Office of Juvenile Justice on child sexual abuse and child pornography, and has provided expert reports and testimony in cases worldwide, including South Africa, Australia, Jamaica and Croatia. She is an internationally recognized expert on the history, fraudulent research and societal effects of Dr. Alfred Kinsey, "The Man Who Changed the World,"[2] and has authored five books and hundreds of articles dealing with

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[1] Counsel for a party did not author this Brief in whole or in part, and no such counsel or party made a monetary contribution to fund the preparation or submission of this Brief. No person or entity, other than *Amici Curiae* or their counsel made a monetary contribution to the preparation and submission of this Brief. The Respondents have filed blanket consents to the filing of Amicus Briefs on behalf of either party or no party. Consents from Petitioners are being filed simultaneously with this Brief.

[2] *New Biography of Alfred Kinsey Published in China*, KINSEY TODAY, Spring 2008, http://www.kinseyinstitute.org/newsletter/sp2008/zhoubook.html.

human sexuality as well as the implications of Kinsey's research on law and public policy.

Amici's extensive information on the history and effects of Kinsey's research on cultural values and institutions over the last 60 years is monumentally important to this Court's decision. Amici respectfully submit this Brief for the Court's consideration.

INTRODUCTION

This Court cannot–and should not–erase millennia of human history and dismantle the granite cornerstone of society in favor of an experimental construct that is barely a decade old. This case presents the Court with the opportunity to affirm and preserve the unique, comprehensive union of a man and a woman, the foundational social institution upon which society was built and the future of the nation depends. *See Ex parte State of Alabama ex rel. Alabama Policy Institute* 2015 WL 892752, *5 (Supreme Court of Alabama March 3, 2015). As the Alabama Supreme Court and the Sixth Circuit did, this Court should reject calls to remove society's proven cornerstone and replace it with the shifting sand of an undefined union of people who are "committed" to each other based upon an "emotional bond."

Changing millennia of history must always be approached with trepidation. In this

case, the change must be rejected outright not only because it is seeking to redefine something which cannot be redefined, but also because the proposed change is grounded in fraudulent "research" based on skewed demographics and *the sexual abuse of hundreds of infants and children.*[3] The "research" upon which Petitioners base their artificial construct of same-sex "marriage" is contained in Alfred Kinsey's books on male and female sexuality,[4]

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[3] Alfred Kinsey, et.al. SEXUAL BEHAVIOR IN THE HUMAN MALE, 175-80 (1948) ("Kinsey MALE" herein). Tables 31-34 describe "observations" of "orgasms" in infants and children as young as two months. Table 34 is reproduced below:

AGE	NO. OF ORGASMS	TIME INVOLVED	AGE	NO. OF ORGASMS	TIME INVOLVED
5 mon.	3	?	11 yr.	11	1 hr.
11 mon.	10	1 hr.	11 yr.	19	1 hr.
11 mon.	14	38 min.	12 yr.	7	3 hr.
2 yr.	7	9 min.	12 yr.	3	3 min.
	11	65 min.		9	2 hr.
2½yr.	4	2 min.	12 yr.	12	2 hr.
4 yr.	6	5 min.	12 yr.	15	1 hr.
4 yr.	17	10 hr.	13 yr.	7	24 min.
4 yr.	26	24 hr.	13 yr.	8	2½ hr.
7 yr.	7	3 hr.	13 yr.	9	8 hr.
8 yr.	8	2 hr.		3	70 sec.
9 yr.	7	68 min.	13 yr.	11	8 hr.
10 yr.	9	52 min.		26	24 hr.
10 yr.	14	24 hr.	14 yr.	11	4 hr.

Table 34. Examples of multiple orgasm in pre-adolescent males

Some instances of higher frequencies.

[4] *Id.*; Alfred C. Kinsey, *et. al.* SEXUAL BEHAVIOR IN THE HUMAN FEMALE, (1953) ("Kinsey FEMALE" herein).

which legitimized homosexual conduct and ushered in a societal transformation that has now affected three generations and every aspect of American life. Although represented to be objective scientific studies, Kinsey's reports "were informed by a set of values and intellectual preferences that, taken together, could be said to constitute an ideology."[5] An ideology built upon the sexual abuse of infants and children,[6] and the libeling of the "Greatest Generation."[7]

The release of Kinsey's reports prompted clarion calls for fundamental changes in behavioral science, law, medicine and other social institutions. Those calling for change did not acknowledge, let alone try to explain, the records of child sexual abuse prominently presented and discussed in Kinsey's books nor the other significant falsehoods in the

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5 Paul Robinson, THE MODERNIZATION OF SEX, 49 (1976).

6 Kinsey MALE at 175-80, Tables 31-34. Those children, now adults, include *Esther*, whose father regularly molested her and recorded the acts for transmission to Kinsey, *see* Judith Reisman, STOLEN HONOR, STOLEN INNOCENCE, 152 (2013).

7 Judith Reisman, SEXUAL SABOTAGE, 1-15 (2010).

"research."[8] Over the last 67 years, the calls for change have been heeded and manifested themselves in, *inter alia,* the decriminalization or diminution of punishment for most sexual offenses, no fault divorce and related changes in family law, removal of homosexuality as a mental disorder, and new protected classes based on sexual conduct. The fundamental societal transformation reached this Court in 2003 when, relying upon Kinsey-inspired changes in law and policy, this Court decriminalized same-sex sodomy in *Lawrence v. Texas,* 539 U.S. 558 (2003).

Now this Court is being asked to again use aberrant research created by aberrant researchers based on the sexual abuse of hundreds of children to make fundamental changes to American law—this time to demolish natural marriage. This Court should not permit the institution of marriage to become the latest victim of the Kinseyan model of American society.

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[8] *See* W. Allen Wallis, *Statistics of the Kinsey Report,* 248 JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION, 463-84 (1949) (discussing statistical errors in the report and concluding that Kinsey falsified data); Rene Wormser, ed. FOUNDATIONS 104 (1993) (citing Dr. Albert Hobbs' congressional testimony that the Kinsey reports were "designed to deceive").

LEGAL ARGUMENT

I. MARRIAGE WAS NOT CREATED BY AND CANNOT BE REDEFINED BY LAW.

The request to "define" or "redefine" marriage reflects a fundamental misunderstanding of the nature of the institution, a misunderstanding that is exacerbated by societal changes spawned by Kinsey's fraudulent research. As the Alabama Supreme Court affirmed:

> [M]arriage is a "prepolitical" "natural institution" "not created by law," but nonetheless recognized and regulated by law in every culture and, properly understood, an institution that must be preserved as a public institution based on the following rationale: "The family is the fundamental unit of society.... [F]amilies ... produce something that governments need but, on their own, they could not possibly produce: upright, decent people who make honest law-abiding,

> public-spirited citizens. And marriage is the indispensable foundation of the family."

Ex Parte Alabama, 2015 WL 892752 at *5. "Thus it is for the stability and welfare of society, for the general good of the public, that a proper understanding and preservation of the institution of marriage is critical." *Id.* at *6.

That has been understood by human society for millennia, even in cultures that were accepting of homosexuality and pedophilia.[9] "[E]ven in cultures very favorable to homoerotic relationships (as in ancient Greece), something akin to the conjugal view [marriage as a comprehensive union] has prevailed–and nothing like same-sex marriage was even imagined."[10] Indeed, the concept of marriage being anything other than what it has always been was not imagined until Kinsey's work became well-ensconced as an authority in decisions that have fundamentally changed law and policy related to sexual conduct.

With a few notable exceptions, *see, e.g.*, *Steffan v. Cheney*, 780 F.Supp. 1, 6 n.12 (D.C.

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[9] Sherif Girgis & Ryan T. Anderson, WHAT IS MARRIAGE? MAN AND WOMAN: A DEFENSE 11 (2012).

[10] *Id.*

Dist. 1991),[11] Kinsey's works have been widely cited by courts as authoritative evidence regarding sexuality.[12] In addition, once the Kinseyan approach to sexuality was incorporated into statutory law, particularly, the Model Penal Code ("MPC"), *see infra*, the statutes became primary authority for

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[11] Citing Review, *Really, Dr. Kinsey?*, 337 THE LANCET, 547 (1991) (citing Judith A. Reisman & Edward W. Eichel, KINSEY, SEX AND FRAUD: THE INDOCTRINATION OF A PEOPLE (1990) for the proposition that the Kinsey reports on male/female sexuality involved knowingly unethical use of unrepresentative populations).

[12] *See, e.g., Hernandez-Montiel v. INS*, 225 F.3d 1084, 1093 (9th Cir. 2000) (citing Kinsey for proposition that "sexual identity is inherent to one's very identity as a person."); *Gay Rights Coalition of Georgetown University Law Center v. Georgetown University*, 536 A.2d 1, 33-34 (D.C. Ct. App. 1987) (citing Kinsey's data on the prevalence of homosexuality and the Kinsey scale); *State v. Next Door Cinema Corp.*, 225 Kan. 112 (1978) (citing Kinsey as authority for educational value of obscenity, and upholding an obscenity exemption for scientific, educational and governmental purposes).

Kinseyan-based changes in law,[13] including this Court's decriminalization of same-sex sodomy in *Lawrence*, 539 U.S. 558 (2003).

Laws criminalizing consensual same-sex sodomy remained in force in 14 states when this Court heard *Lawrence* in 2003.[14] The Texas court of appeals referenced Kinsey in its decision upholding Texas' law criminalizing consensual same-sex sodomy.[15] The Texas court concluded that the statute did not violate rights of privacy or equal protection because it did not discriminate on the basis of sexual orientation.[16] Citing Kinsey, the court said:

> While homosexuals may be disproportionately affected by the

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13 *See e.g., Miller v. California*, 413 U.S. 15, 18 (1973); *Roth v. United States*, 354 U.S. 476, 487n.20 (1957); *Roe v. Wade*, 410 U.S. 113, 139-40 (1973) (citing the MPC as representative of the liberalization of abortion statutes); *Doe v. Bolton*, 410 U.S. 205, Appendix B (1973); *Kennedy v. Louisiana*, 554 U.S. 407, 412 (2008); *Lawrence*, 539 U.S. at 572.

14 William N. Eskridge, Jr., DISHONORABLE PASSIONS: SODOMY LAWS IN AMERICA 1861-2003, 388-407 (2008).

15 *Lawrence v. State*, 41 S.W.3d 349, 353 (Tex. Ct. App. 2001), *jdt. rev'd, sub nom Lawrence v. Texas*, 539 U.S. 558 (2003).

16 *Id.*

> statute, we cannot assume homosexual conduct is limited only to those possessing a homosexual "orientation." Persons having a predominately heterosexual inclination may sometimes engage in homosexual conduct. Thus, the statute's proscription applies, facially at least, without respect to a defendant's sexual orientation.[17]

In reaching the opposite conclusion, this Court did not cite directly to Kinsey, but relied on the 1955 MPC and other "laws and traditions of the past half century" that "show an emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex." *Lawrence*, 539 U.S. at 571-72. Those "laws and traditions of the last half century" included not only the MPC, but also legal scholarship built upon Kinsey's fraudulent "data" derived from child sexual abuse.[18] That scholarship included Seventh Circuit Chief Judge Richard Posner's *Sex and*

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17 *Id.*

18 *See* Judith Reisman, *Sodomy Decision Based On Fraudulent "Science,"* HUMAN EVENTS, (August 14, 2003) http://humanevents.com/2003/08/19/sodomy-decision-based-on-fraudulent-science/

Reason, in which he touted Kinsey's studies as "high water marks" in scientific study of sex without discussing the background of Kinsey's "data," discussed *infra*.[19] *Lawrence*, 539 U.S. at 576. The Court also cited researchers who glowingly praised Kinsey for his strong "assault on sexual reticence" and his call for a complete revision of cultural values surrounding sex "to match the actual practices of Americans."[20] *Id.* at 568. These "actual practices" described by Kinsey were actually records of sexual abuse of children and interviews with sex offenders, prisoners and pedophiles misrepresented to be the actions of everyday Americans, as discussed in detail *infra*. The *Lawrence* Court also cited as authority for a purported sea change in cultural values a book, the title of which should have offered a clue to its adoption of a homoerotic Kinsey worldview: *The Invention of Heterosexuality*. *Id.*[21] Based upon these Kinseyan sources, the Court determined that the Due Process Clause protects consensual same-sex sodomy. *Id.* at 578. Same-sex sodomy

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19 Richard A. Posner, SEX AND REASON, 19 (1992).

20 John D'Emilio & Estelle B. Freedman, INTIMATE MATTERS: A HISTORY OF SEXUALITY IN AMERICA 16, 285-287 (1997).

21 Citing Jonathan Ned Katz, THE INVENTION OF HETEROSEXUALITY, 10 (1995).

was said to be an aspect of personhood protected by the right to privacy. *Id.* at 574.

> At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

Id. (citing *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 851 (1992)). The stage was thus set for the attempted dismantling of natural marriage.

II. COURTS HAVE USED *LAWRENCE* TO JUSTIFY CREATING AN ARTIFICIAL CONSTRUCT OF SAME-SEX "MARRIAGE."

Some courts have utilized *Lawrence*, 539 U.S. 558 (2003), to justify dismantling marriage. Only five months after this Court's decision, the Supreme Judicial Court of Massachusetts relied upon *Lawrence* to overturn the Commonwealth's statutes defining marriage as the union of one man and one woman. *Goodridge v. Dep't. of Public Health*, 440 Mass. 309, 312, 349 (2003). The Massachusetts court erased the objective

structure of marriage, concluding that it was no longer to be defined as the union of one man and one woman, but must include same-sex couples. *Id.* at 349-50.

Left unanswered was how marriage was to be defined once its objective structure was removed. That question remains unanswered 12 years later, as reflected in the most recent cases declaring that man-woman marriage laws are unconstitutional. *See, Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014) *cert denied sub nom Bogan v. Baskin,* 135 S.Ct. 316 (U.S. Oct. 06, 2014); *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014), *cert denied sub nom Rainey v. Bostic*, 135 S.Ct. 286 (U.S. Oct. 06, 2014); *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014) *cert denied sub nom Herbert v. Kitchen*, 135 S.Ct. 265 (U.S. Oct. 06, 2014).

Some courts have adopted this Court's language in *Lawrence* that same-sex relations are choices protected by the Due Process Clause, which is in keeping with Kinsey's opinion that sexuality is fluid.[22] *Kitchen,* 755 F.3d at 1205; *Bostic,* 760 F.3d at 377. However, in the Seventh Circuit, Judge Posner actually contradicted Kinsey in an effort to place homosexuality in an even more privileged position. *Baskin*, 766 F.3d at 657. Homosexuality is "an immutable (and probably

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[22] *See* Kinsey MALE, at 639 (describing sexuality as a continuum), discussed *infra.*

an innate, in the sense of in-born) characteristic rather than a choice," decreed Posner. *Id.*

> The American Psychological Association has said that "most people experience little or no sense of choice about their sexual orientation.... The leading scientific theories of the causes of homosexuality are genetic and neuroendocrine theories, the latter being theories that sexual orientation is shaped by a fetus's[sic] exposure to certain hormones.

Id. Judge Posner revised Kinsey's "data" and history when he said that same-sex couples must be included in marriage to ease the pain of a discrimination that is greater than any suffered by every other group in history, implying that enslaved African-Americans, exterminated Jewish people in Nazi Germany, women denied economic and political power and other persecuted minorities were not as mistreated as were homosexuals who had enjoyed all of the rights of citizenship, economic power and liberty.

> Because homosexuality is not a voluntary condition and

> homosexuals are among the most stigmatized, misunderstood, and discriminated-against minorities in the history of the world, the disparagement of their sexual orientation, implicit in the denial of marriage rights to same-sex couples, is a source of continuing pain to the homosexual community.

Id. Judge Posner further claimed that granting marriage rights to homosexual couples would help convince the opponents of same-sex "marriage" that "homosexual married couples are in essential respects...like other married couples." *Id.* Notably, the California Supreme Court has not been convinced, as it has concluded that heterosexual intercourse is fundamentally different from other sexual conduct and therefore can be differentially treated in sex offender statutes. *Johnson v. Dep't. of Justice*, 60 Cal.4th 871, 884 (2015).

Neither should this Court be convinced to follow Judge Posner and adopt Kinsey's ideology that "there [are] no grounds for placing heterosexual intercourse in a privileged position."[23] Instead, as did the Alabama Supreme Court, this Court should affirm the child-centric and child-protective view of

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[23] Robinson, at 59.

marriage as the union of one man and one woman, *i.e.*:

> "...[T]he idea of the family, as consisting in and springing from union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement."

Ex Parte Alabama, 2015 WL 892752 at *6 (citing *Murphy v. Ramsey*, 114 U.S. 15, 45 (1885)).

> Government is concerned with public effects, not private wishes. The new definition of marriage centers on the private concerns of adults, while the traditional definition focuses on the benefits to society from the special relationship that exists between a man and a woman, i.e., the effects for care of children, the control of passions, the division of wealth in society, and so on.

Id. at *36. As did the Alabama Supreme Court, this Court should affirm its 130-year precedent,

based on millennia of human history, and refuse to embrace the Kinseyan-based artificial construct urged by Petitioners.

III. ALFRED KINSEY'S REPORTS WERE IDEOLOGICALLY DRIVEN PROPAGANDA NOT SUPPORTED BY SCIENCE.

The call to dismantle marriage is the latest manifestation of a fundamental societal transformation birthed in 1948, when Kinsey burst onto the scene proclaiming that everything Americans knew about human sexuality for centuries was a lie and America's mothers and fathers were hypocrites.[24] ACLU founder Morris Ernst described Kinsey's effect:

> The whole of our laws and customs in sexual matters is based on the avowed desire to protect the family, and at the base of the family is the father. His behavior is revealed by the Kinsey Report to be quite different from anything the general public had supposed possible or reasonable.[25]

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[24] Morris Ernst & David Loth, AMERICAN SEXUAL BEHAVIOUR AND THE KINSEY REPORT, 81, 83 (1948).

[25] *Id.*

According to the Kinsey team, 95 percent of American men were engaging in sexual conduct that was illegal under existing laws.[26] This included 67 percent to 98 percent who had premarital sex; 69 percent who had at least one experience with a prostitute and 50 percent who were adulterers.[27] Kinsey's team also reported that up to 50 percent of farmers had sex with animals.[28] As was true with other sexual experiences such as homosexuality, pedophilia and pederasty, Kinsey's team decried any classification of bestiality as "aberrant" or "abnormal," claiming that such labels are applied only because of inexperience and acceptance of an old-fashioned judgment that "abnormal" activities, including "animal intercourse must evidence a mental abnormality, as well as an immorality."[29] Kinsey also claimed that 10 to 37 percent of men committed homosexual sodomy at some time in their lives and 46 percent "reacted to" both sexes at some point.[30]

Despite the glaring contradiction between what Americans believed to be true in post-

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26 Morris Ploscowe, *Sexual Patterns and the Law*, in SEX HABITS OF AMERICAN MEN 126 (Albert Deutsch, ed., 1948).

27 Kinsey MALE, at 549–52, 586-87, 597.

28 *Id.* at 671.

29 *Id.* at 677.

30 *Id.* at 650-51, 656.

World War II America and what Kinsey's team reported, the Kinsey "data" were accepted virtually without question and touted as a scientific breakthrough that would change the world.[31] Judge Posner and others credit Kinsey as the "central figure" in the "scholarly science" of sexology[32] as they rely on Kinsey to usher in fundamental legal change such as dismantling marriage.[33]

However, what neither Judge Posner nor the others who have relied upon Kinsey's research have ever explained is how this "scholarly science" could make claims such as: (1) "infant...males are capable of ... complete orgasm whenever a sufficient stimulation is provided;"[34] (2) absent social restrictions females would be sexually active from birth until death;[35] and (3) children actively seek repeated sexual experiences with adults.[36] Indeed, scholars and law students who have

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31 *See,* Phillip Zimbardo, *et. al.*, INFLUENCING ATTITUDES AND CHANGING BEHAVIOR 89 (1977)

32 Posner, SEX AND REASON, 19.

33 *See Baskin,* 6 F.3d at 672 (declaring Indiana and Wisconsin's laws defining marriage as the union of one man and one woman unconstitutional).

34 Kinsey MALE, at 181.

35 Kinsey FEMALE, at 115-16.

36 *Id.* at 118.

grown up reading Judge Posner and others simply repeat that "Kinsey also found that infants and toddlers are capable of erections, orgasms, and other sexual responses,"[37] without even pausing to consider the heartbreaking and gross violations of human dignity that Kinsey and his accomplices would have had to perpetrate to come up with their "data" and conclusions. The lack of intellectual curiosity and scholarly integrity has meant that evidence of serial sexual abuse of infants and children as young as two months has not merely been swept under the rug, but has become the pivot point for a fundamental societal shift now before this Court in a request to demolish natural marriage.

A. Kinsey Used Child Molesters To Convince The World That All Sexual Activity Is Normal And Acceptable.

Kinsey's unquestioned "data" documenting children as "sexual from birth" came from the sexual abuse of up to 2,035

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[37] Elizabeth Garfinkle, *Coming Of Age In America: The Misapplication Of Sex-Offender Registration And Community-Notification Laws To Juveniles*, 91 CAL. L. REV. 163, 190 (2003).

infants and children as young as two months.[38] Although displayed openly as "tables" listing infants and toddlers tested for "multiple orgasms,"[39] from "contacts" with adults, the fact that Kinsey based his "findings" on experimental child sexual abuse has escaped the scrutiny of law enforcement or criticism by scholars for more than 60 years.

Kinsey claimed that "these data on the sexual activities of younger males provides an important substantiation of the Freudian view of sexuality as a component that is present in the human animal from earliest infancy...."[40] "[T]he sexual activities of younger males"[41] are discussed in detail and documented in five tables: Table 30, "pre-adolescent eroticism and orgasm....one year old....males;" Table 31, "pre-adolescent experience in orgasm....actual observation of 317 males....*two months old* to 15 years;" Table 32, "speed of pre-adolescent orgasm....188....cases...males....*five months* to

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38 Kinsey MALE, at pp. 176-80, Tables 30-34.

39 *Id.*

40 *Id.* at 180. This, of course, was long before child abuse scandals in the Roman Catholic church and other institutions came to light.

41 *Id.*, Tables 30-34, pp. 175-80. Throughout the book, Kinsey uses the term "male" to describe infants and children from 2 months to 18 years.

adolescence....duration of stimulation before climax....timed using....second hand or stop watch;" Table 33, "multiple orgasms ....182...males....the capacities of pre-adolescent boys in general;" and Table 34, "multiple orgasm in pre-adolescent males....*five months* to 14 years," timed for up to 24 hours and allegedly having 26 "orgasms."[42]

Kinsey called the statistics "typical" and said, "Even the youngest males, as young as five months of age, are capable of such repeated reactions....The maximum observed was 26 clima[x]es in 24 hours, and the report indicates that still more might have been possible in the same period of time.[43] These "reactions" to sexual stimuli that Kinsey labeled "orgasm" in children from two months to 12 years old included: body tension, twitching, rigidity, extreme tension with violent convulsions, hysterical laughing (among the younger children), extreme trembling, collapse, fainting, excruciating pain and screaming.[44] Some children "will fight away from the partner [Kinsey's term for the molester] and may make violent attempts to avoid climax, although they derive definite pleasure from the situation."[45]

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42 *Id.* (emphasis added).

43 *Id.* at 179-80.

44 *Id.* at 160-61.

45 *Id.* at 161.

At the time that Kinsey's book, including these quotes and tables, was released apparently no one asked how this information was obtained.[46] It was not until many years after the books were established as "authoritative" that Kinsey's associates revealed what should have been clear to everyone reading the books, *i.e.*, that he had obtained the information from serial child rapists, including Nazi Fritz von Balluseck and American Rex King who gave Kinsey their records of sexual assaults on hundreds of children.[47] According to Kinsey co-author Paul Gebhard, King "contributed a fair amount to our knowledge and medicine's knowledge of sexuality in children."[48] "We made our point that children are sexual from birth."[49]

Kinsey reiterated that point in his report on female sexuality in which he recorded what

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[46] Jonathan Gathorne-Hardy, KINSEY SEX THE MEASURE OF ALL THINGS, 222 (1998) (The chapter discussing the children was almost the only one ignored on publication).

[47] *Id.* at 220-23 (identifying King under the pseudonym initially used by Kinsey, Kenneth Green); *See also* Reisman, STOLEN HONOR, at 136-39.

[48] Reisman, STOLEN HONOR, at 136-39 (quoting Gebhard's interview on KINSEY'S PAEDOPHILES).

[49] *Id.*

he called "pre-adolescent sexual contacts with adult males."[50] An adult male was defined as "at least 15 years of age" and "at least five years older than the female, while the female was still pre-adolescent."[51] Kinsey reported that 24 percent of the females included in his study had been approached for or actually had sexual "contact:" 52 percent with strangers, 32 percent with "friends or acquaintances" and 20 percent with fathers, grandfathers, uncles and brothers.[52] Kinsey claimed that in "many instances, the experiences were repeated because the children had become interested in the sexual activity and had more or less actively sought repetitions of their experience."[53] Kinsey said that cases of the "adult contacts" with children causing damage are "in the minority, and the public should learn to distinguish such serious contacts from other adult contacts which *are not likely to do the child any appreciable harm if the child's parents do not become disturbed.*"[54] Kinsey justified his conclusion by saying that among the 4,441 girls and women on whom he had information, there was only one "clear-cut case of serious injury done to the child, and a very

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50 Kinsey FEMALE at 117-19.

51 *Id.*

52 *Id.*

53 *Id.* at 118.

54 *Id.* at 121-22 (emphasis added).

few instances of vaginal bleeding which, however, did not appear to do any appreciable damage."[55] "Kinsey numbered himself among those who contended that, as far as so-called molestation of children was concerned, a great deal *more damage was done to the child by adult hysteria*."[56] That refrain has been echoed ever since by courts, police, psychologists, etc., as cases of child sexual abuse and incest have skyrocketed.[57]

Indeed, Kinsey's team made their point that children are sexual from birth so well that it became a rallying cry across the world as Kinsey's "data" were translated into a dozen languages, and Kinsey soon replaced Sigmund Freud as the global "scientific" authority on human sexuality.[58]

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55 *Id.* at 122.

56 Wardell Pomeroy, DR. KINSEY AND THE INSTITUTE FOR SEX RESEARCH, 207-08 (1972) (emphasis added).

57 Judith Reisman, *Implications of Kinsey Research on Child Custody Cases,* EXPOSÉ: THE FAILURE OF FAMILY COURTS TO PROTECT CHILDREN FROM ABUSE IN CUSTODY DISPUTES, (Our Children Our Future Charitable Foundation, 1999).

58 Lena Lennerhed, *The Pursuit of Pleasure: Sexliberalism in Sweden in the 1960's,* History of Ideas, Gender Studies, International

> Alfred Kinsey . . . was the scientific authority. Kinsey's rejection of Freud's sublimation theory was interpreted as an argument *for the right among the young, even teenagers, to have an unrestricted sex life* . . . and evidence that traditional moral standards were outdated and contrary to human nature.[59]

Kinsey's claim that child sexual abuse, what he called adult-child "contacts," was harmless and "normal,"[60] was part of his overall conclusion that all sex–what he termed "sexual outlets," *e.g.*, "masturbation, spontaneous nocturnal emissions, petting, heterosexual intercourse, homosexual contacts and animal contacts"–at any age were equally acceptable and normal reactions to stimuli.[61] "[T]he scientific data which are accumulating make it appear that, if circumstances had been propitious, most individuals might have become conditioned in any direction, even into

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Institute of Social History, www.iisg.nl/womhist/lennerhed.doc.

59 *Id.* (emphasis added).

60 Kinsey MALE, at 678.

61 *Id.*

activities which they now consider quite unacceptable."[62]

The "scientific data" to which Kinsey alluded were not only records of child sexual abuse, but also interviews with predominantly aberrant men and women. Kinsey's reports were portrayed as representative samples of what everyday Americans actually did sexually.[63] In fact, as Kinsey's team acknowledged, the "subjects" listed in the male report included 1,400 convicted sex offenders, about 329 non-sex offender prisoners, 200 sexual psychopath patients, more than 450 homosexuals and about 300 people from what Kinsey called "the underworld."[64] *Sixty-eight percent of the interviews were conducted when most American men were fighting in World War II* and were either away from home or were prohibited from speaking to strangers about their private lives.[65] Kinsey's co-authors admitted that they mixed male prison inmates in with other interviewees, generalized their observations to the wider population, and deliberately did not publish the exact figures of

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62 *Id.*

63 *Id.*, at 5.

64 Reisman, STOLEN HONOR, at 91-92, citing Kinsey MALE, at 13-16, 78, 176.

65 Kinsey MALE, at 10, describing the timeframe for the interviews. *See also*, Reisman, STOLEN HONOR, at 88-89.

the population of interviewees.[66] The figures for the female population were similarly skewed, as Kinsey said he interviewed 7,789 females, including 216 minors, seven under age four,[67] and 915 female prison inmates.[68] Data from the female prisoners and 934 non-white interviewees were deliberately excluded from his final report.[69]

It is this deliberately skewed, predominantly aberrant, child abuser and child abuse victim population upon which Kinsey's team based the statistics which supposedly showed that the World War II generation was secretly promiscuous, to the degree that 95 percent would be in prison under the then-existing criminal statutes.[70] It is also the population upon which Kinsey based his scale, devised because he thought it would be a good idea and the genesis for the often quoted standard that 10 to 37 percent of the population are homosexual.[71]

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66 Reisman, STOLEN HONOR, at 89.

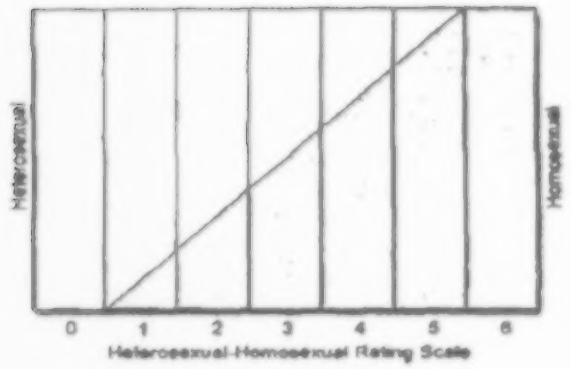
67 Kinsey FEMALE, at 22, 31, 32, 105.

68 *Id.* at 22.

69 *Id.*

70 Ploscowe, at 126.

71 Kinsey MALE at 636-41.



Kinsey placed individuals along a seven point scale for each period of their lives. Zero denotes solely heterosexual and six denotes solely homosexual.[72] Homosexual experiences included *any* same-sex "contact," including in dreams, fantasies, rapes or "contacts" when a subject was drunk, drugged or asleep.[73] The "Kinsey scale" is cited as authoritative worldwide. However, historian Paul Robinson recognized the scale is:

> a pathetic manifestation of Kinsey's philosophical naiveté...a hopelessly mechanical contrivance, which sought to promote a system of classification that bore little relation to reality"....a gargantuan

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72 *Id.*

73 *Id.* at 640-41.

> scientific hoax promoted by Kinsey for reasons of his own....[74]

While those seeking to establish a new construct of same-sex "marriage" argue that homosexuality is "immutable,"[75] Kinsey's scale and his conclusions regarding its meaning belie the claim:

> Males do not represent two discrete populations, heterosexual and homosexual. The world is not to be divided into sheep and goats. Not all things are black nor all things white.... Only the human mind invents categories and tries to force facts into separated pigeon-holes. The living world is a continuum in each and every one of its aspects. The sooner we learn this concerning human sexual behavior the sooner we shall reach a sound understanding of the realities of sex.[76]

Those "realities," according to Kinsey, were that "all orgasms were equal, regardless

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74 Robinson, at 73-74.

75 *See, e.g., Baskin*, 766 F.3d at 657 (holding that homosexuality's immutability means man-woman marriage laws are based on animus).

76 Kinsey MALE, at 639.

of how one came by them, and that there were accordingly no grounds for placing heterosexual intercourse in a privileged position."[77] Consequently, *marital intercourse, and by extension, marriage, has no particular innate value*:

> The notion of *outlet,* for all its apparent innocence, performed important critical services for Kinsey. Principal among these was the demotion of heterosexual intercourse to merely one among a democratic roster of six possible forms of sexual release. . marital intercourse, was even more rudely confined to a single chapter toward the back of the book, where it received about one third the attention devoted to homosexual relations .... a remarkable feat of sexual leveling . . . *the fundamental categories of his analysis clearly worked to undermine the traditional sexual order.*[78]

While Kinsey's sexual leveling has gained wide acceptance, some courts still recognize the fundamental differences between marital

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77 Robinson, at 55-56, 59.

78 *Id.* at 58-59 (emphasis added).

intercourse and other sexual conduct. Although it embraced the artificial construct of same-sex "marriage" in 2008, the California Supreme Court recently re-affirmed the fundamental difference between heterosexual intercourse and other sexual acts in upholding the differential treatment of sex offenders who engage in "unlawful sexual intercourse with minors" versus those who engage in oral sodomy or other acts. *Johnson*, 60 Cal.4th at 884.[79]

Nevertheless, most scholars and courts have embraced, and are now asking this Court to embrace, Kinsey's ideology that undermined "established categories of sexual wisdom" in favor of his "ideal sexual universe according to a homoerotic model."[80]

Consequently, rather than being, as marketed, unbiased studies based upon objective observations, the Kinsey reports were idealized presentations of a sexual utopia reflecting Kinsey's personal preferences and

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[79] The term "unlawful sexual intercourse" replaced the term "rape" in 1970 to "eliminate the social stigma which arises when the distinction between forcible rape and intercourse with a consenting female minor is not made." *Id.* at 885

[80] Robinson at 54, 64, 70.

private aberrant lifestyle.[81] Kinsey was secretly a bi/homosexual adulterer whose numerous male sex partners included his co-authors and interviewees.[82] He was addicted to pornography and masturbation and was observed engaging in self-mutilation,[83] which apparently contributed to his contracting "orchitis," a sexually transmitted disease, and his untimely death in 1956.[84] As his biographers have reported, if the public knew at the time what was really going on behind the scenes of Kinsey's reports, "his work and career would have been ruined."[85]

Instead, Kinsey's "homoerotic model" became established in academia, law and public perception as "statistically common behavior" that gradually came to be seen as normal, and is now being used to attempt to demolish marriage. As one group of psychologists concluded: "[T]he results of the Kinsey surveys on sexual behavior of the American male and female *established, to some degree, social standards of what was acceptable common*

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81 James H. Jones, *Annals of Sexology Dr. Yes*, THE NEW YORKER, August 25 & September 1, 1997, at 112.

82 *Id.*

83 James H. Jones, ALFRED C. KINSEY A PUBLIC PRIVATE LIFE, (1997) at 610

84 Jones, *Dr. Yes*, at 113.

85 *Id.* at 111-12.

practice,"[86] spawning what came to be called the "sexual revolution."

B. Kinsey's Reports Are Neither Scientific Nor Objective.

That revolution was not based upon scientifically sound, objectively verifiable research. Kinsey claimed, and many of his supporters including prominent jurists[87] still maintain, that the reports "represent an attempt to accumulate an objectively determined body of fact about sex which strictly avoids social or moral interpretations" that had until then restricted "scientific investigations in this field."[88]

In fact, within one year of the publication of the initial Kinsey report, the American Statistical Association (ASA) released a report concluding that Kinsey had falsified his data.[89] The "statistical data [don't reveal] the number of males covered in the volume," but variably claimed that there were about 6,200 or 6,300 subjects, 12,214 interviewees and 21,350 men (and infants and boys).[90] The ASA report

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86 Zimbardo, at 89 (emphasis added).

87 *See e.g.*, Posner, SEX AND REASON, at 19.

88 Kinsey MALE at 3.

89 Wallis, at 463-84.

90 *Id.* at 474, citing Kinsey MALE, at 5.

concluded that Kinsey had actually only interviewed, at most, 4,120 "men."[91] What the ASA reviewer did not know at the time was that 75 percent of the records were never used. "Kinsey interviewed 18,000 people and used only a quarter of the cases in his two reports."[92]

Kinsey's co-authors acknowledged that the male sample "is nowhere well described"[93] and that they concealed the composition of the subjects, *i.e.*, that they were primarily sex offenders and prisoners.[94] "We anticipated that we would spend the rest of our lives arguing exactly who should be accepted as a normal individual, and who should be ruled out as a low character."[95] Prisoners, homosexuals and sex offenders were included as average men. "I am certain there wasn't a code to designate which of the case histories were included in the male volume..."[96]

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91 *Id.*

92 Arno Karlen, SEXUALITY AND HOMOSEXUALITY, 456 (1971), quoting Kinsey researcher William Simon.

93 Reisman, STOLEN HONOR, 52, quoting Kinsey co-author and "statistician" Clyde Martin.

94 Pomeroy, at 293.

95 *Id.*

96 Reisman, STOLEN HONOR at 52.

The ASA reviewer noted that the statistical data and Kinsey's conclusions did not match.[97]

> A great many assertions of implications about religious, ethical, sociological, psychological, and philosophical matters are scattered through the book—so many that I got a cumulating impression that the author is at heart a social reformer. Most of his conclusions, explicit or implicit, about social and moral issues are based not so much on the statistical data "routinely secured in the interviews" as on "supplementary data" secured by other techniques.[98]

University of Pennsylvania Sociologist Dr. Albert Hobbs testified before Congress that the Kinsey reports were "designed to deceive."[99]

> Apart from the doubtful veracity of the samples of men and women questioned by Kinsey, his statistical methods have been

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97 Wallis, at 464-65.

98 *Id.*

99 Wormser, at 104.

> seriously criticized by organs of the American Statistical Association and several scholarly reviewers. But even...if all the persons interviewed had been willing to give truthful answers and were psychologically capable of doing so, it seems preposterous to propose that social change should be justified upon empirical inquiry alone.[100]

But that is precisely what has happened. For the past 67 years, purportedly objective scholars, lawyers and judges have undertaken fundamental societal transformation by embracing statistically and scientifically fraudulent "data" derived from serial child rapists, sex offenders, prisoners, prostitutes, pedophiles and pederasts[101] misrepresented as average Americans. Now these same change agents, still covering up the fraudulent nature of the Kinsey "data," want this Court to utilize it to demolish the cornerstone of society, natural marriage. This Court should not countenance such a destructive move.

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100 *Id.*

101 Kinsey MALE at 39, 176-80; Kinsey FEMALE at 39-40.

IV. CULTURAL CHANGE AGENTS IGNORED ERRORS AND EVIDENCE OF CHILD MOLESTATION AND CALLED FOR FUNDAMENTAL TRANSFORMATION BASED UPON KINSEY'S "WORK."

Despite explicit evidence of sexual abuse of children and of significant statistical anomalies, leaders in the behavioral sciences, law, and other disciplines quickly began demanding the jettisoning of the prevailing Judeo-Christian worldview in favor of Kinsey's "scientific" homoerotic worldview. These change agents proclaimed that "Kinsey did more than document American sexual behavior. He challenged the legitimacy of public regulation of sexual conduct through morality."[102] Within weeks of publication, Kinsey's reports were cited as "scientific" authority for fundamental transformation of law, public policy, education, behavioral sciences, medicine and other institutions.[103] Calls for change began even

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[102] David Allyn, *Private Acts/Public Policy: Alfred Kinsey, the American Law Institute and the Privatization of American Sexual Morality*, 30 JOURNAL OF AMERICAN STUDIES, 416-17 (1996).

[103] *See e.g.*, Ploscowe, *Sexual Patterns and the Law*; Ernst & Loth, AMERICAN SEXUAL BEHAVIOUR AND THE KINSEY REPORT; Rene

before the ink was dry on Kinsey's first "report."

A. Behavioral Science Uses Kinsey To Steer Away From Morality.

Touting Kinsey's reports as "praiseworthy efforts to study the problems of human sexuality more objectively and scientifically,"[104] leaders in the behavioral sciences met with Kinsey to devise a new paradigm based on his "science" and rejected "subjective" standards of morality and natural law. Acknowledging that "Kinsey's findings were the points by which we steered,"[105] leading professional associations sought to de-criminalize illicit sexual behavior

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Guyon, THE ETHICS OF SEXUAL ACTS (1948); Donald Porter Geddes & Enid Currie eds. ABOUT THE KINSEY REPORT (1948); Edwin H. Sutherland, *The Sexual Psychopath Laws*, 40 J. OF CRIMINAL LAW AND CRIMINOLOGY 543, 544-45 (1950); Herbert Wechsler, *The Challenge of a Model Penal Code*, 65 HARVARD L. REV. 1097, 1106 (1952).

[104] Vernon A. Rosario, *An Interview with Judd Marmor*, 7 J. OF GAY & LESBIAN PSYCHOTHERAPY 26 (2003).

[105] Manfred Guttmacher, *The Kinsey Report and Society*, 70 SCIENTIFIC MONTHLY 291-94 (May 1950).

and de-stigmatize offenders.

In 1949 the Group for the Advancement of Psychiatry ("GAP") published a paper on deviant sex offenders in which it echoed Kinsey's claims that sex offenders "are not involved in behavior fundamentally different from that commonplace in the population."[106] It "urged a general decriminalization of illicit sexual behavior, saying that 'some laws should be revised and perhaps some entirely abandoned.'"[107] GAP called for reconsideration of the age of consent (then 21) for child sexual relations with adults because:

> In general, persons under the age of 7 are legally regarded as not responsible.....On the other hand the legal definition of the minor ignores the intervening events of puberty and the large variations in physical and emotional maturity observed in many persons stamped as minors....many are by endowment and training fully

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106 Allyn at 420, citing Committee on Forensic Psychiatry of the Group for the Advancement of Psychiatry, *Psychiatrically Deviated Sex Offenders, Report No. 9* (May 1949).

107 *Id.*

> capable of part or exceptionally even full responsibility for sexual behavior.[108]

A National Institute of Mental Health (NIMH) Task Force on Homosexuality comprised of Kinsey associates and proponents[109] offered another virtually verbatim recitation of Kinsey's "findings," stating, *inter alia,* that sexuality was a continuum from heterosexuality ("0") to homosexuality ("6") and that any mental health issues and diseases related to homosexual conduct were *caused* by societal stigma.[110]

Kinsey's data were also used to pressure the American Psychiatric Association ("APA") to drop homosexuality as a psychiatric disorder

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108 Committee on Forensic Psychiatry of the Group for the Advancement of Psychiatry, *Psychiatrically Deviated Sex Offenders, Report No. 9* 2 (May 1949 revised and republished February 1950). http://ourgap.org/publications/publist.aspx?Category=Archived Reports.

109 Jeffrey Satinover, *The "Trojan Couch:" How the Mental Health Associations Misrepresent Science* 2, *http://narth.org/docs/TheTrojanCouchSatinover.pdf.*

110 *Id.* at 2.

from the Diagnostic and Statistical Manual (DSM) in 1973,[111] because:

> ...exclusive homosexuality was a normal part of the human condition and homosexuality did not meet the requirements of a psychiatric disorder because the "data" prove it doesn't "cause subjective distress or is regularly associated with some generalized impairment in social effectiveness or functioning."[112]

The American Psychological Association and National Association of Social Workers soon followed suit.[113] As GAP president Manfred Guttmacher predicted: "The debt that society will owe to Kinsey and his co-workers for their research on sexual behaviour will be immeasurable."[114]

B. Legal Experts Push For Overhaul Of Criminal Law Based On Kinsey.

Legal experts swiftly parlayed Kinsey's "research" into campaigns for fundamental changes in the law, particularly related to sex

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111 *Id.* at 3-4.

112 *Id.*

113 *Id.* at 4.

114 Allyn, at 420, citing Guttmacher.

offenses.[115] Immediately after his first book was released, Kinsey met with political and academic leaders and testified before legislatures working to rewrite sex offense laws.[116] A sex crimes commission for the New Jersey Senate issued a report calling for reform because, *inter alia*:

> It has been carefully estimated by Dr. Kinsey that not more than 5 percent of our convicted sex offenders are of a dangerous variety, exercising force or injury upon a victim....The sex fiend....is a rare phenomenon in the criminal history of any state.[117]

Kinsey told California legislators that his "data" proved that children are unharmed by sex abuse and that molesters do not re-offend

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115 *Id.* at 421.

116 Tamara Rice Lave, *Only Yesterday: The Rise And Fall Of Twentieth Century Sexual Psychopath Laws*, 69 LA. L. REV. 549, 561 (2009).

117 *Id.* at 561-62, *citing* Paul W. Tappan, THE HABITUAL SEX OFFENDER: REPORT AND RECOMMENDATIONS OF THE COMMISSION ON THE HABITUAL SEX OFFENDER 13-14 (1950).

and therefore should be paroled.[118]

Legal scholars and jurists also embraced Kinsey's claims and flooded law reviews with articles calling for the overhaul of sex offender laws. For example, Judge Morris Ploscowe said:

> [E]nforcement of the prohibitions of sex legislation [are a] failure, our sex crime legislation is completely out of touch with the realities of [life]. [T]he law attempts to forbid an activity which responds to a wide human need . . . . [N]o bar association, law school journal, or lawyers' committee can consider laws . . . on sexual matters without reference to the Kinsey study. *Kinsey's first volume ended an era . . . . [It is] the single greatest contribution of science to the . . . law in my lifetime* [more than] the Brandeis Brief. [119] [T]he sex offender is not a monster . . . but an individual who is not very different

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[118] THE SUBCOMMITTEE ON SEX CRIMES OF THE ASSEMBLY INTERIM COMMITTEE ON JUDICIAL SYSTEM AND JUDICIAL PROCESS (Preliminary Report), H. Res. 232-1949, 43-1949 at 103, 105, 117 (Cal. 1949).

[119] Ploscowe, *Sexual Patterns and the Law*, 125-26.

> from others in his social group.... The only difference is that others in the offender's social group have not been apprehended.
>
> This recognition that there is nothing very shocking or abnormal in the sex offender's behavior should lead to other changes in sex legislation. . . . In the first place, it should lead to a downward revision of the penalties presently imposed on sex offenders.[120]

"The findings of...the Kinsey report, would seem to require a drastic re-examination of our statutes relating to sexual offenses."[121]

The University of Georgia law review proclaimed, "if Dr. Kinsey's statistics are reasonably accurate, then the multitude of people in this country" violate sex laws without consequence.[122] The "absurdity of enforcing most of our sex laws...should be obvious, even to the most prudish Neo-Puritans."[123]

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120 *Id.* at 125-26, 133-34 (emphasis added).

121 Morris Ploscowe, SEX AND THE LAW 130 (Ace Books revised and enlarged ed. 1962).

122 Note, *Pedophilia, Exhibitionism and Voyeurism: Legal Problems in the Deviant Society*, 4 GA. L. REV. 149 (1969).

123 *Id.* at 150.

Judge Orville Richardson declared that Missouri had "sex crime statutes that are obsolete and....should be scrapped. Most [sex crimes] abound with archaisms, euphemisms and emotionally charged words such as 'ravish,' 'carnal knowledge,' 'defile,' 'debauch,'.... 'abominable and detestable crime against nature.'"[124] Citing Kinsey's claims that husbands and wives commonly commit adultery, and "56 percent" of men "had some homosexual contact by age 55," Judge Richardson said that people would deny "sexual liberties to their neighbors, which, at least according to Dr. Kinsey, they allow themselves."[125] "Only an intellectually numb person" accepts false sexual standards.[126] Judge Richardson concluded that sexual predators "are dealt with cruelly, to the satisfaction of no one except a shrinking frenetic fringe of maniacal moralists."[127]

Judge Ploscowe argued that sex offenders "are not for the most part degenerate sex fiends who are potential killers."[128]

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124 Orville Richardson, *Sexual Offenses Under the Proposed Missouri Criminal Code*, 38 MO. L. REV. 371, 384 (1973).

125 *Id.* at 371 n.1, 379.

126 *Id.*

127 *Id.* at 372, 384

128 Ploscowe, SEX AND THE LAW at 202.

> If most rapes simply involve consensual acts of sexual intercourse with under-age girls they are not the product of degenerates and psychopaths who force their attentions upon unwilling victims. Only where the age disparity between the man and the girl are very great is it possible to say that the rape may be the work of a mentally abnormal individual, a psychopath, or a potentially dangerous sex offender.[129]

Further echoing the Kinseyan principle that children are sexual from birth, Tulane University professors claimed that *"[e]ven at the age of four or five," a child's "seductiveness may be so powerful as to overwhelm the adult into committing the offense."*[130]

These statements reflect the genesis of what President Ronald Reagan observed in 1981: "For most of the past thirty years justice has been unreasonably tilted in favor of criminals and against their innocent victims.

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129 *Id.*

130 Ralph Slovenko & Cyril Phillips, *Psychosexuality and the Criminal Law,* 15 VANDERBILT LAW REVIEW 797, 809 (1962). (emphasis added).

This tragic era can fairly be described as a period when victims were forgotten and crimes were ignored."[131]

In 1952 Professor Herbert Wechsler issued a clarion call for a model penal code to lower or eliminate sex crime penalties.[132] Citing Kinsey's "data," the primary drafter of the sexual offense provision said that consensual sodomy between adults should be fully decriminalized, leaving only forcible sodomy and sodomy with a minor as criminal offenses.[133] That Kinseyan approach was adopted in the final version of the sex offenses provisions of the MPC.[134] Illinois adopted the sex offenses provisions in 1961, and by 2001, 37 states had adopted the MPC sex offenses language.[135]

The MPC incorporated other Kinseyan concepts, particularly related to children being "sexual from birth" and therefore capable of consenting to sexual activity with adults. This included defining rape as nonconsensual

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131 Ronald Reagan, *Preface: California Department of Justice, Crime Victims Handbook* (1981).

132 Herbert Wechsler, *The Challenge of a Model Penal Code*, 65 HARVARD L. REV. 1097 (1952).

133 Eskridge, at 121-24

134 *Id.* at 124.

135 *Id.* at 388-407.

intercourse with a "female *less than 10 years old*"[136] and permitting a defense based upon a mistaken belief that a girl was 10 years old or older and/or was sexually promiscuous.[137] Peer rape was regarded as "sex play," and rape of a victim between 10 and 16 years old by a perpetrator more than four years older was reclassified as a misdemeanor of "corruption of a minor."[138] This was quite a change from less than a decade earlier when rape was a capital crime in one-half of the states.[139]

Indeed the changes wrought by Kinsey's fraudulent "data" permeated all laws regarding sexual behavior.

> Regarding homosexuality, Schwartz cited the Kinsey Reports as evidence of the frequency of homosexual activity and the senselessness of trying to control it.... *When the American Law Institute's model penal code was published, it proposed a major reconstruction of the law of sexual behavior. The suggested reconstruction was made possible*

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136 MODEL PENAL CODE §213.1(1)(d) (1980).

137 MODEL PENAL CODE §213.6(1), (3) (1980).

138 MODEL PENAL CODE §213.3(1)(a) (1980).

139 Reisman, STOLEN HONOR, at 221.

by the first and second Kinsey Reports.[140]

Kinsey's concept that children are sexual from birth is now enshrined in statutes throughout the country. As President Reagan observed, criminal law has shifted from protecting vulnerable victims to protecting offenders.

V. DISMANTLING MARRIAGE WILL EXACERBATE THE CULTURAL DAMAGE CAUSED BY KINSEYAN PHILOSOPHY.

Nearly seven decades of Kinseyan cultural transformation have shown that Kinsey's promises of a freer, more enlightened and safer society were, at best, illusory, and at worst, deceptive. All of the cultural indicators that should have improved according to Kinsey and his supporters have in fact declined, in some cases, precipitously, as the full effect of the called-for changes has become manifest.

Kinsey claimed that fornication and adultery were widespread and not harmful. If anything, according to Kinsey, such experiences actually strengthened marriages. Therefore, laws against fornication and adultery were

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140 Allyn, at 424-25 (emphasis added).

unjust, unfair and unconstitutional.[141] Drafters of the MPC took Kinsey's advice and decriminalized those sexual offenses.[142]

Instead of strengthening marriages, the decriminalization and de-stigmatization of adultery, fornication and other non-marital conduct have had the opposite effect, as illegitimacy rates have skyrocketed from 4 percent in 1940 to 41 percent overall, with 72.3 percent of non-Hispanic blacks; 66.2 percent of American Indians/Alaska Natives; 53.3 percent of Hispanics; 29.1 percent of non-Hispanic whites; and 17.2 percent of Asians/Pacific Islanders now born out-of-wedlock.[143] Divorce rates have risen by more than 40 percent.[144]

Despite claims that the MPC would lower crime rates by de-criminalizing certain conduct,[145] crime rates have not only increased, but new types of crimes and victims have

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141 Reisman, STOLEN HONOR, at 216-19.

142 *Id.*

143 Roger Clegg, Latest Statistics on Illegitimate Births, NATIONAL REVIEW (OCTOBER 4, 2012). http://www.nationalreview.com/corner/329432/latest-statistics-illegitimate-births-roger-clegg

144 Sheela Kennedy & Steven Ruggles, *Breaking Up Is Hard to Count: The Rise of Divorce in the United States, 1980–2010,* 51 DEMOGRAPHY, 587-98 (April 2014).

145 Wechsler, at 1103.

emerged. Violent crime reports increased 129 percent between 1960 and 2012, and reports of "forcible rape" (victim age 12 or above) have increased 182 percent in the same time period.[146] Children are becoming victims at younger ages and are in turn themselves become perpetrators.[147] Rates of sexually transmitted disease have increased, and new diseases have surfaced.[148]

Sixty-seven years of Kinseyan-based social change has not lived up to its promises, but has led to a cultural decline that will only accelerate should the boundary of marriage as the union of one man and one woman be removed.

As President Washington presciently said in his Farewell Address:

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146 http://www.disastercenter.com/crime/uscrime.htm

147 Howard N. Snyder, Ph.D., *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, National Center for Juvenile Justice, July 2000 http://www.bjs.gov/content/pub/pdf/saycrle.pdf

148 Centers for Disease Control and Prevention, Division of STD Prevention Sexually Transmitted Disease Surveillance 2013 (December 2014).

> Resist with care the spirit of innovation...which will undermine what cannot be directly overthrown...In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of governments...[and that] changes [based on] mere hypothesis and opinion, exposes to perpetual change, from the endless variety of hypothesis and opinion.[149]

Millennia of history should not be dismantled based upon hypotheses and opinions built on the sexual abuse of infants and children by an unrepentant serial sexual predator.

CONCLUSION

Just as *Dred Scott* legitimized African-American slaves as property[150] and *Buck v. Bell* validated the idea that "three generations of

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149 George Washington, 1796, http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtID=3&psid=160.

150 *Dred Scott v. Sandford,* 60 U.S. 393, 395-96 (1856).

imbeciles are enough,"[151] this case could enshrine in the Constitution the concepts that "children are sexual from birth" and all sexual boundaries, including that marriage is solely the union of one man and one woman, must be eliminated.[152] The consequences of dismantling natural marriage and replacing it with an artificial construct of same-sex "marriage" could exceed the disastrous consequences of *Dred Scott* and will be as irreversible as the court-sanctioned sterilization of "imbeciles" in *Buck*. If this Court accedes to Petitioners' desires, then this case will join *Dred Scott* and *Buck* in a hall of shame upon which future generations will look with derision.

Borrowing this Court's language from *Buck*, "three generations of [Kinseyan atrocities] is enough." This Court should affirm the judgment below.

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151 *Buck v. Bell*, 274 U.S. 200, 207 (1927).

152 Kinsey, MALE, 180; *See also*, Robinson, 54-56, 64, 70.

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